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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,588	10/11/2001	Benny B. Johansen	RXSD 1019-1	8700
22470	7590	06/13/2006	EXAMINER	
HAYNES BEFFEL & WOLFELD LLP			LEE, PING	
P O BOX 366			ART UNIT	
HALF MOON BAY, CA 94019			PAPER NUMBER	

2615

DATE MAILED: 06/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/975,588

Applicant(s)

JOHANSEN ET AL.

Examiner

Ping Lee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-6, 8, 17-20, 27-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over a hearing test program from hearingrx.com.

Regarding claims 27, 28, 35 and 36, hearingrx.com discloses a method of testing the hearing of a user utilizing a speaker of a computer system. The claimed first audio source reads on sound player as disclosed on the page "SETUP VOLUME CONTROL", the claimed second audio source reads on other sources inherently included, such as microphone, CD player. A computer program is downloaded from the website (see "DOWNLOAD SOUND FILES") to the computer. After that, the program is being executed. A stimulus is generated ("HEARING TEST") and an input is received from the user indicating audibility.

Regarding claims 1, 2, 8 and 17, hearingrx.com discloses a method of testing the hearing of a user utilizing a speaker of a computer system. The claimed step of muting first audio source reads on muting window exclamation as disclosed on the page "SETUP VOLUME CONTROL", the claimed second audio source (other sources inherently included, such as microphone, CD player, the test tone). A computer program is downloaded from the website ("DOWNLOAD SOUND FILES") to the computer. After that, the program is being executed. A stimulus is generated ("HEARING TEST") and an input is received from the user indicating

audibility.

The web page from Hearingrx.com fails to show the step of execution of the computer program muting the first audio source without user intervention. The web page discloses the user manually mutes the audio source. However, it is not "invention" to broadly provide automatic means to replace manual activity which has accomplished the same result. In re Rundell, 18 CCPA 1290, 48 F.2d 958, 9 USPQ 220. In re Venner, 120 USPQ 192 (CCPA 1958). Thus, it would have been obvious to one of ordinary skill in the art to modify the program by implementing a step to automatically mute the audio source in order to eliminate the manual process and ease the burden on the user.

Regarding claims 3 and 29, hearingrx.com fails to show email. Although hearingrx.com teaches downloading the program, it was within the level of ordinary skill in the art to use other well known methods, such as through email, to transfer the program for the user without generating any unexpected result. Thus, it would have been obvious to one of ordinary skill in the art to modify hearingrx.com by offering the user to accept the hearing test program through different channel, such as through email.

Regarding claims 4-6, 18-20, 30-32 and 37-39, hearingrx.com teaches that sound volume has to be adjusted. Therefore, it would have been obvious for the user to check the box and adjust the volume setting.

Regarding claims 33, 34, 40 and 41, although hearingrx.com fails to explicitly show the claimed sound source, including MIDI and WAVE, it would have been obvious

to one of ordinary skill in the art to use any suitable sound source to generate the testing stimulus.

3. Claims 7, 9-16 and 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over a hearing test program from [hearingrx.com](http://hearingrx.com) in view of [didyouhearme.com](http://didyouhearme.com) and Barmore (US 6,016,352).

Regarding claims 7, 9, 10, 15, 16, 21, 22 and 26, [hearingrx.com](http://hearingrx.com) discloses a method of testing the hearing of a user utilizing a speaker of a computer system. The printout of the web page from [hearingrx.com](http://hearingrx.com) fails to show the step of storing a value that indicates whether the first audio source was muted and if the stored value indicates that the first audio source was not muted, then muting the first audio source.

The web page from [hearingrx.com](http://hearingrx.com) teaches that using speakers for testing would not be as accurate as the one using the headphone. Furthermore, the user has to cover one ear while the other one is being tested when using speakers for testing. Another similar on-line hearing testing, [didyouhearme.com](http://didyouhearme.com), teaches that the user has to be in a quiet room, no noise or sound should be presented during the test. The accuracy of the hearing test is, as understood by one skilled in the art, depended on the testing environment which should have no other sound except the testing stimulus regardless whether the testing is performed at home or at professional testing facility (within anechoic chamber). In order to make sure there is no other sound in a nonprofessional setting, all sound sources should be cut off whenever it is possible. A computer, as commonly known, could have multiple sound sources, including microphone. The user can manually mute each and every sound source, but this would

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take time and the user sometime might forget to mute all the sources. Barmore teaches a muting control circuit for computer sound circuit. A plurality of sound sources could be muted simultaneously by a single GPIO bit (col. 5, lines 24-30).

Thus, it would have been obvious to one of ordinary skill in the art to modify the hearing test program from hearingrx.com in view of didyouhearme.com and Barmore by muting the unused sound sources in a computer during hearing testing using a single bit if the source has not been muted in order to allow the user to take the test without manually muting the sources separately.

Regarding claim 9, although hearingrx.com and didyouhearme.com fail to explicitly show un-mute the first audio source after the hearing test is done, the user inherently would manually perform the un-muting after the testing is done. This claimed step is being performed automatically. Furthermore, it is well settled that it is not "invention" to broadly provide an automatic means to replace manual activity which has accomplished the same result. In re Venner et al., 120 USPQ 192.

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1-41 have been considered but are moot in view of the new ground(s) of rejection.


5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ping Lee whose telephone number is 571-272-7522.

The examiner can normally be reached on Monday and Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian C. Chin can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Ping Lee  
Primary Examiner  
Art Unit 2615

pwl